

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE WHITE and KIMBERLY WHITE,

Plaintiffs,

CIVIL CASE NO. 05-40018

v.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION

Before the Court are Plaintiffs' "Motion For Relief of Judgment," filed October 18, 2005; Plaintiffs' "Motion to Invoke Order," filed December 9, 2005; Plaintiffs' "Motion For Emergency Stay of Judgment," filed December 12, 2005; Defendant's "Motion to Dismiss Complaint For Insufficiency of Service of Process Pursuant to FRCVP 12(b)(5) and Failure to State a Claim Upon Which Relief May Be Granted Pursuant to FRCVP 12(b)(6)," filed December 30, 2005; Plaintiffs' "Motion For Demand of Judgment," filed January 3, 2006; Plaintiffs' "Motion For Default Judgment," filed January 10, 2006; Plaintiffs' "Amended Motion For Demand of Judgment," filed January 20, 2006; and Defendant's "Motion to Set Aside Entry of Default Pursuant to FRCVP 55(c)," filed January 31, 2006. Also before the Court is the Report and Recommendation of the Honorable Wallace Capel, Jr., United States Magistrate Judge. The Magistrate Judge recommends that this Court dismiss the case due to insufficiency of service of process. The Magistrate Judge filed his Report and Recommendation on March 20, 2006 and notified all the parties that any objections must be filed within ten days of service. Neither party has filed objections to the Report

and Recommendation.

The Court's standard of review for a Magistrate Judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). As the Supreme Court observed, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Since neither party has filed objections to the Report and Recommendation, the Court need not conduct a review.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry 32] is **ACCEPTED and ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Complaint For Insufficiency of Service of Process Pursuant to FRCVP 12(b)(5) and Failure to State a Claim Upon Which Relief May Be Granted Pursuant to FRCVP 12(b)(6) [docket entry 16] is **GRANTED IN PART**, as the motion is granted because of insufficiency of service of process without a determination as to whether Plaintiffs failed to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that Defendant's Motion to Set Aside Entry of Default Pursuant to FRCVP 55(c) [docket entry 26] is **GRANTED**.

IT IS FURTHER ORDERED that this action, No. 05-40018, is **DISMISSED WITHOUT PREJUDICE** for insufficiency of service of process.

IT IS FURTHER ORDERED that Plaintiffs' Motion For Relief of Judgment [docket entry

8], Plaintiffs' Motion to Invoke Order [docket entry 11], Plaintiffs' Motion For Emergency Stay of Judgment [docket entry 10], Plaintiffs' Motion For Demand of Judgment [docket entry 19], Plaintiffs' Motion For Default Judgment [docket entry 21], Plaintiffs' Amended Motion For Demand of Judgment [docket entry 22] are **DENIED**.

SO ORDERED.

Dated: May 3, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on May 4, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Susan E. Wilkerson, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jesse and Kimberly White.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845